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Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

Jointly Administered Under Case No.  
BK-S-06-10725 LBR

**DECLARATION OF GEOFFREY L.  
BERMAN IN SUPPORT OF  
MOTION TO APPROVE CLAIMS  
BASED UPON INVESTMENT IN  
THE PLACER II LOAN**

Date of Hearing: July 26, 2011

Time of Hearing: 1:30 p.m.

Estimated Time for Hearing: 10 minutes

Geoffrey L. Berman declares under penalty of perjury:

1. I am an adult person competent to testify in court.
2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.
3. I am the Trustee of the USACM Liquidating Trust ("USACM Trust"), which is an entity created by the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), in the jointly-administered bankruptcy cases, In re USA Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.

4. Around November 2004, USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for a “Second Deed Trust Investment” to fund an acquisition and development loan to a borrower identified as “USA Investment Partners, LLC or assignee.” A copy of the Placer II Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. (Berman Decl., ¶ 4.) The total loan amount proposed in the Placer II Offer Sheet was \$6,500,000. The loan proceeds were to be used to acquire property for the development of a community in an area approximately twenty miles northeast of Sacramento California, all within a larger specific plan that encompassed five thousand acres, and would ultimately include dwelling units, commercial and business parks, schools, parks, and open space. The Placer II Offer Sheet noted that the investment would be secured by a second deed of trust on approximately 338 acres (the “Property”) and repayment would be guaranteed personally by Tom Hantges and Joe Milanowski.

5. At the same time that USACM circulated the Placer II Offer Sheet, it also circulated another offer sheet for a “First Trust Deed Investment” related to the same real estate development (the “Placer I Offer Sheet”). The “First Trust Deed Investment” contemplated a \$31,500,000 loan for the acquisition of the Property to “USA Investment Partners, LLC or assignee” (the “Placer I Loan”). The Placer I Loan was to be secured by a first deed of trust on the Property and a personal guaranty from Tom Hantges and Joe Milanowski.

6. The Placer II Offer Sheet indicated that the loan would be repaid after the Borrower sold the entire property to one or more merchant builders, upon approval of the site’s specific plan. The Placer II Offer Sheet also indicated that the loan to value ratio would be approximately 60.8% upon completion of the specific plan. The Offer Sheet purported to base the loan to value ratio upon an appraisal that was “in process.” In USACM’s file, there is a December 21, 2004 appraisal from Seevers Jordan

1 Ziegenmeyer, that values the Property as of December 3, 2004. It indicates that the  
2 Property had an approximate value of \$33,830,000 and a “hypothetical prospective  
3 market value upon final approval of Placer Vineyard Specific Plan” of \$67,660,000.  
4 Thus, the loan to value figure provided in the Placer II Offer Sheet appears to be  
5 supported by a contemporaneous appraisal.

6 7. On December 10, 2004, Borrower made and delivered to various lenders,  
7 including the Placer I Lenders, a “Promissory Note Secured by Deed of Trust” (the  
8 “Placer I Note”) and a Loan Agreement related to the Placer I Loan (the “Placer I Loan  
9 Agreement”). (Berman Decl., ¶6.) The Placer I Note and Placer I Loan Agreement  
10 provided for a loan in the initial principal amount of \$27,500,000, however, the Placer I  
11 Loan Agreement provided for an increase in the loan amount up to \$31,500,000. This is  
12 the amount ultimately lent to the Borrower by the Placer I Lenders, pursuant to  
13 subsequent amendments to the Placer I Loan Agreement and the Placer I Note. The  
14 Placer I Note was secured by a document entitled “Deed of Trust, Assignment of Rents,  
15 Security Agreement and Fixture Filing” (the “Placer I Deed of Trust”), that was recorded  
16 as Document No. 2004-0169766 in the official records of Placer County, California on  
17 December 20, 2004. (Berman Decl., ¶ 6.) The Placer I Deed of Trust was the senior lien  
18 on the Property. Later loan advances were secured by amendments to the Placer I Deed  
19 of Trust likewise recorded in Placer County. (Berman Decl., ¶ 6.)

20 8. Also on December 10, 2004, Borrower made and delivered to various  
21 lenders, including the Placer II Lenders identified in **Exhibit A**, a “Promissory Note  
22 Secured by Deed of Trust” (the “Placer II Note”) and a Loan Agreement related to the  
23 Placer II Loan (the “Placer II Loan Agreement”). (Berman Decl., ¶6.) The Placer II Note  
24 and Placer II Loan Agreement provided for a loan in the initial principal amount of  
25 \$6,500,000. The Placer II Loan, like the Placer I Loan, was intended to be used to  
26 acquire the Property and pay for certain pre-development costs. (Berman Decl., ¶6.) The

Placer II Note was secured by a document entitled “Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, Second Position” (the “Placer II Deed of Trust”), that was recorded as Document No. 2004-0169767 in the official records of Placer County, California on December 20, 2004. (Berman Decl., ¶ 6.)

9. The Placer II Offer Sheet indicates that the Placer II Loan will be guaranteed by the principals of USA Investment Partners, Tom Hantges and Joe Milanowski, and states that they have a combined net worth of approximately \$97 million as of June 30, 2004. Hantges and Milanowski executed personal guarantees. The USACM Trust filed claims in their respective bankruptcy cases. (Berman Decl., ¶ 6.)

10. Pursuant to its terms, the Placer I Note and the Placer II Note were scheduled to mature eighteen months after the Deed of Trust was recorded, in May 2006. By then, USACM was a debtor in possession in a chapter 11 bankruptcy. According to the USACM July 31, 2006 “Loan Summary” the Placer I Loan and the Placer II Loan were nonperforming, and USACM records indicate no payments were ever made. By letters dated November 30, 2006, USACM informed Hantges and Milanowski that the loan was in default and they were therefore in default of their guarantees. (Berman Decl., ¶ 6.)

11. The Placer I loan documents noted the loan would be supported by a \$6.5 Million investment by the Borrower. Tom Hantges and Joe Milanowski, the guarantors on both the Placer I and Placer II loans, were the principals of the Borrower through USA Investment Partner’s ownership interests. Unbeknownst to the Placer II Lenders, Tom Hantges and Joe Milanowski used the proceeds from the Placer II Loan to fund their obligations under the Placer I investment documents. The fact that the Placer II loan was the intended equity contribution to support the Placer 1 loan was not disclosed to the investors in the Placer II loan and should have been so disclosed. Had it been disclosed,

the Trustee believes that many, if not all of the Placer II Lenders, would not have invested in the Placer II Loan.

12. According to the USACM July 31, 2006 "Loan Summary" both Loans were nonperforming, and USACM records indicate that the Loan Outstanding Balance at 2/28/07 for the Placer I Loan was \$31,500,000, with \$5,602,920 in Interest Outstanding at 2/28/07, and \$1,228,292 in Interest Prepaid to Investors, and also indicates that the Loan Outstanding Balance at 2/28/07 for the Placer II Loan was \$6,500,000, with \$1,435,656 in Interest Outstanding at 2/28/07, and \$259,999 in Interest Prepaid to Investors.

13. Pursuant to the confirmed Plan of Reorganization, the USACM Trust assumed the obligation to service the Placer I and II Loans. <sup>1</sup>

14. On April 27, 2007, the USACM Trust made demand on the Borrower for payment of the Placer I and II Loans. The Borrower did not make any payments. On May 10, 2007, the USACM Trust made demand on the guarantors - Joseph Milanowski and Thomas Hantges, who did not make any payments. The USACM Trust reported monthly to the Lenders<sup>2</sup> on the status of loan collection efforts and the need for a servicer advance to pay unpaid real estate taxes.

15. In June 2007, after consultation with and with the consent of the Lenders, the USACM Trust advanced \$678,649.19 to bring the taxes current on the Property in order that the Property might be included in certain public entitlements approved by the Placer County Board of Supervisors later that month. The taxes were paid and the entitlements were obtained.

16. The USACM Trust consulted with the trustee of USA Investment Partners, LLC about the possibility of a sale of the Property for market value, but less than the full payoff due on the Placer I Loan (much less the Placer II Loan). No offer was received by

<sup>1</sup> Notice of Withdrawal of: Motion to Sell Under Section 363 All Commercial Mortgage Assets of Debtor USA Commercial Mortgage Company in the Placer Vineyards Loans [DE 3424].

<sup>2</sup> <http://usacmcucc.bmcgroup.com/Placer%20County/Forms/AllItems.aspx>.

the USA Investment Partners Chapter 11 Trustee. Additionally, a number of Lenders (in both the Placer 1 and 2 loans) opposed the proposition of a sale of the Property for less than all sums due on the Loans, by this time totaled upwards of \$50 million. The USACM Trust ultimately initiated a non-judicial foreclosure sale of the Property.

17. As the foreclosure process was ongoing, a number of Lenders acted in concert to question the authority of the Trust to direct the foreclosure sale on behalf of the Placer I Lenders. Accordingly, on October 2, 2008, the USACM Trust filed a complaint against the Borrower and the Direct Lenders, seeking the appointment of a receiver over the Property. The matter came before the Honorable Kent Dawson, United States District Court, District of Nevada, in case number 2:08-cv-01276-KJD-RJJ. On December 16, 2008, Elli Mills was appointed as receiver for the Placer I Lenders (the "Receiver") and authorized to foreclose on the Property.<sup>3</sup>

18. After appointment of the Receiver, a foreclosure sale on the Property occurred on December 22, 2008, upon a \$8,404,030 credit bid, and the trustee's sale deed was recorded in the Records of Placer County, California. The Receiver continues to market the Property for sale. The amount of the eventual distribution to the Placer I Lenders is unknown, but the Trustee expects any distribution to be well below the value of the principal amount of the Placer I Loan. Further, in light of the status of the bankruptcies for Mr. Hantges and Mr. Milanowski, the Trustee does not believe any meaningful recovery by the Placer II direct lenders on account of their guaranty claims is likely as well. Accordingly, the Trustee does not believe there will be any distribution to the Placer II Lenders but for their share of the Trust's recoveries on the proposed allowed claims.

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<sup>3</sup> The Receiver submits periodic reports to the Placer I Lenders and maintains a website for their information.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Dated: June 13, 2011

3 /s/ Geoffrey L. Berman  
4 Geoffrey L. Berman

5  
6 Copy of the foregoing (without exhibits)  
7 Mailed by First Class postage prepaid  
8 U.S. Mail on June 13, 2011 to the  
9 Investors in the Placer I Loan listed  
10 on Exhibit A.

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s/ Matt Burns  
Matt Burns  
Lewis and Roca LLP